

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS KYLE MORRISON,)
Petitioner,)
v.) 1:11CV553
) 1:10CR134-1
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

On April 24, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. No objections to the Recommendation have been filed. Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #45] is hereby adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc. #21, #33] is GRANTED as to Petitioner's supplemental claim based on the decision in United States v. Simmons, and as a result the Judgment [Doc. #20] is VACATED, and Count Three of the Indictment [Doc. #1] is DISMISSED. The Clerk is directed to set this matter for resentencing as to Count One. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement

to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This the 12th day of June, 2013.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge